



June 22, 2006

TO: Transportation Authority of Marin Commissioners

FROM: Dianne Steinhauser, Executive Director

RE: Cooperative Agreement with Caltrans for 101 HOV Project, Agenda Item 14

Dear Commissioners:

Executive Summary

Staff and Caltrans have finalized draft Amendment No. 2 of the Financial Contribution Agreement with Caltrans for the Highway 101 HOV Project. Amendment No. 2 outlines the terms and conditions, including funding, for including the multi-use path and sound absorbing soundwalls in the highway project. Staff is requesting that the Board grant their approval for the Chairman to sign Amendment No. 2.

Recommendation: Staff recommends the following: Approve Resolution 2006-10, authorizing the Chairman to execute Amendment No. 2 to the existing Financial Contribution Agreement (District Agreement No. 4-1938-C), executed January 29, 2004 and Amendment No. 1 executed April 28, 2005, adding the multi-use and sound absorbing soundwalls to the project and updating the project costs and funds. The TAM Board authorizes the Executive Director to make minor changes to Amendment No. 2 prior to approval by the Chairman.

Background

On January 29, 2004 TAM and Caltrans entered into a Contribution Agreement (District Agreement No. 4-1938C) to define the terms and conditions to undertake environmental documentation, design, right-of-way acquisition and construction of the Highway 101 HOV project. On April 28, 2005, Caltrans and TAM entered into Amendment No. 1 to the aforementioned agreement in which TAM agreed to contribute additional CMAQ and \$10,050,000 in Measure A sales tax funds for right-of-way and construction activities.

Amendment No. 2

Amendment No. 2 to the Contribution Agreement is needed to specify the terms and conditions (including funding commitments) to include the multi-use path and sound absorbing soundwalls to the Puerto Suello Hill Segment of the Highway 101 HOV project. The funding changes will include the following:

- Add \$2,432,000 in STIP Transportation Enhancement funds for the multi-use path
- Add \$3,480,000 in CMAQ funds for construction

- Add \$2,200,000 in Measure A funds for construction of the multi-use path and sound absorbing soundwalls

Staff requests that the Board grant the Chairman the authority to sign Amendment No. 2 of the Contribution Agreement with Caltrans and grant the Executive Director the authority to make minor changes to Amendment No. 2 prior to approval by the Chairman.

Recommendation: Staff recommends the following: Approve Resolution 2006-10, authorizing the Chairman to execute Amendment No. 2 to the existing Financial Contribution Agreement (District Agreement No. 4-1938-C), executed January 29, 2004 and Amendment No. 1 executed April 28, 2005, adding the multi-use and sound absorbing soundwalls to the project and updating the project costs and funds. The TAM Board authorizes the Executive Director to make minor changes to Amendment No. 2 prior to approval by the Chairman.

Attachments: Amendment No. 2 - Caltrans District Agreement No. 4-1938-A2
Resolution 2006-10

DRAFT

AMENDMENT NO. 2 TO AGREEMENT

THIS AMENDMENT NO. 2 TO AGREEMENT, ENTERED INTO EFFECTIVE ON _____, 2006, is between the STATE OF CALIFORNIA, acting by and through its Department of Transportation, referred to herein as "STATE," and the TRANSPORTATION AUTHORITY OF MARIN, a public entity, referred to herein as "TAM."

RECITALS

1. The parties hereto entered into a Financial Contribution Agreement (Document No. 015737, Agreement No. 4-1938-C) on January 29, 2004, defining the terms and conditions of a corridor project to undertake environmental documentation, design, right of way acquisition, and construction of high occupancy vehicle (HOV) lanes on State Route 101 (SR 101) and improvements at the SR 101/I-580 interchange, referred to herein as "PROJECT," between STATE and the Marin County Congestion Management Agency (CMA).
2. The parties hereto also entered into an Amendment No. 1 to Agreement (Document No. 015737, Agreement No. 4-1938-A1) on April 28, 2005, for TAM to assume authority and responsibilities over CMA as its successor and as the congestion management agency for Marin County. Amendment No. 1 also increased TAM's funding contribution to PROJECT consisting of additional Federal funds and the addition of local Measure A funds towards capital construction costs.
3. TAM now desires a multi-use bike path and application of noise absorbing material on a portion of PROJECT soundwalls, collectively referred to herein as "IMPROVEMENTS," and is willing to provide preliminary engineering, at TAM's expense outside of PROJECT funds, and to fund capital construction costs through State, regional, and local Measure A funds for PROJECT. IMPROVEMENTS are located within PROJECT limits and within State right of way.
4. STATE agrees to include IMPROVEMENTS to PROJECT construction. TAM is currently finalizing IMPROVEMENTS' environmental document, design, and PROJECT Supplemental Project Report to incorporate IMPROVEMENTS into STATE's PROJECT as one construction contract.
5. TAM also desires to contribute an allocation of local funds (Measure A sales tax funds) that are under the sole control of TAM, referred to herein as "MEASURE FUNDS," STIP-RIP TE funds to be applied towards IMPROVEMENTS construction capital costs, as shown on Exhibit C, attached to and made a part of this Amendment No. 2 to Agreement. The remainder of IMPROVEMENTS cost will be part of PROJECT cost under the original Agreement, Amendment No. 1, and this Amendment No. 2.

6. The parties intend that this Amendment No. 2 to Agreement will define herein the terms and conditions under which IMPROVEMENTS are to be incorporated into PROJECT, constructed, financed, maintained, and operated.

IT IS THEREFORE MUTUALLY AGREED:

1. Exhibit A-2, dated June 14, 2006, attached to and made a part of this Amendment No. 2 to Agreement, supersedes prior revised Exhibit A-1 of Amendment No. 1 to original Agreement.
2. TAM's total PROJECT obligation shall now not exceed the aggregate of \$68,358,398 listed under "Contributor Amount" and of \$9,510,041 listed under "Match Amount" in Exhibit A-2 of this Amendment No. 2 to Agreement and the amount of \$12,250,000 which represents TAM's contribution of PROJECT construction capital and support costs from MEASURE FUNDS.
3. New Articles 6 through 10, hereby added to Section I of the original Agreement (Document No. 015737), shall read as follows:
 6. To provide design and environmental oversight and approval of IMPROVEMENTS Plans, Specifications and Estimates (PS&E), administer the construction contract for IMPROVEMENTS, and have the PROJECT construction contractor furnish and install IMPROVEMENTS as requested by TAM. TAM's provision of construction inspectors on the project shall be the subject of a separate agreement.
 7. To submit to TAM a billing invoice for a deposit in the amount of \$600,000, fifteen (15) days prior to STATE's bid advertising date for a contract to construct PROJECT. Said deposit represents TAM's obligation for one (1) month of the estimated cost of construction capital (\$500,000) and two (2) months of the estimated cost of construction support (\$100,000) for PROJECT. STATE shall prepare and submit to TAM monthly billing statements for TAM's share of estimated expenditures for construction costs, one (1) month in advance, as construction of PROJECT proceeds.
 8. To consult with TAM on all change orders with an estimated cost of over \$50,000 before implementation, except when necessary for the safety of motorists and/or pedestrians or for the protection of property.
 9. To provide TAM with quarterly reports of actual expenditures compared to any monthly advances made by TAM and to provide updated planned reimbursement schedules. The payment amounts may be revised based on updated planned expenditure schedules. STATE will monitor the actual versus the planned expenditures monthly to assure that TAM's payments will always be sufficient.
 10. To retain, or cause to be retained for audit by TAM's auditors, for a period of three (3) years from the date of processing the final detailed statement for the costs of PROJECT, all records and accounts relating to construction of PROJECT, and make such materials available at STATE's District 4 Office, and copies thereof shall be furnished to TAM, if requested by TAM.

4. New Articles 14 through 20, hereby added to Section II of the original Agreement (Document No. 015737), shall read as follows:

14. To prepare or have prepared at no cost to STATE the environmental document, supplemental Project Report, and PS&E for IMPROVEMENTS. TAM's consultant shall add IMPROVEMENTS design to PS&E of PROJECT, subject to STATE's design oversight and approval of the Engineer of Record. TAM is responsible for relocation and re-design of proposed storm water treatment Best Management Practices (BMP) for PROJECT resulting from IMPROVEMENTS design and modifications and approval of any changes required to any other permit for PROJECT as a result of the addition of IMPROVEMENTS.
15. To prepare or have prepared contract documents to construct IMPROVEMENTS at no cost to STATE.
16. To prepare documents/reports required for approval of IMPROVEMENTS.
17. TAM, at TAM's expense, will maintain the multi-use path IMPROVEMENTS and shall cooperate with STATE to bring about a separate Maintenance Agreement for the multi-use bike path and all improvements related thereto including, but not limited to, noise absorbing material on the soundwalls, the freeway-side fence, the surface paving and delineation markings, signage, and structural adequacy of the multi-use bike path. The Maintenance Agreement shall be between STATE and TAM, or its designee, such as the City of San Rafael where the multi-use path IMPROVEMENTS are located.
18. To deposit with STATE within thirty (30) working days of receipt of billing from STATE [which billing will be forwarded fifteen (15) days prior to STATE's bid advertising date for a contract to construct PROJECT], the amount of \$600,000. Said deposit represents TAM's obligation for one (1) month of the estimated cost of construction capital (\$500,000) and two (2) months of the estimated cost of construction support (\$100,000) for PROJECT. Pursuant to Article 3 of Section III of this Agreement, STATE shall prepare and submit to TAM monthly billing statements for TAM's share of estimated expenditures for construction costs, one (1) month in advance, as construction of PROJECT proceeds.
19. To make any additional supplement payments when required within thirty (30) calendar days after receipt of invoice.
20. To pay STATE upon completion of all work and within thirty (30) days of receipt of a detailed statement made upon final accounting of costs therefor, any amount over and above the aforesaid advance deposit required to complete TAM's financial obligation pursuant to this Agreement.

7. Section III of the original Agreement (Document No. 015737), shall be replaced in its entirety by the following:

1. All obligations of STATE under the terms of this Amendment No. 2 to Agreement are subject to the appropriation of resources by the Legislature,

the allocation of resources by the California Transportation Commission, and the encumbrance of those FUNDS and MATCH FUNDS to PROJECT.

2. The expenditure of FUNDS, MATCH FUNDS, MEASURE FUNDS, and R.W. FUNDING under sole control of TAM by STATE is subject to the programming and appropriation of those funds by TAM.
3. When disbursing PROJECT payments from capital and capital support funds specified in this Agreement, STATE shall sequentially exhaust available funds in the following order (1) FUNDS and MATCH FUNDS in the total amount of \$78,168,439 and only then (2) MEASURE FUNDS for remaining capital and capital support costs.
4. STATE shall not award a contract to construct PROJECT until after receipt of TAM's deposit required in Article 18 of Section II of this Agreement.
5. Prior to advertising of bids for the construction contract for PROJECT, TAM may terminate this Agreement, in writing, provided that TAM pays STATE for all costs related to PROJECT incurred by STATE under the terms of this Agreement.
6. If, upon opening of bids for the contract to construct PROJECT, the lowest responsible bid is not more than ten percent (10%) over the Engineer's Estimate of \$47,061,000, as shown in Exhibit C, STATE and TAM may conduct a joint review of the bids immediately following opening of bids and prior to submittal of STATE's District 4 letter of recommendation to award to STATE's Office Engineer in Sacramento, if so requested by TAM. After the joint review and within the time allowed for award, STATE may award the construction contract for PROJECT, provided that STATE may, at its sole discretion, in writing, authorize a greater amount, but not exceed any party's maximum contribution under this Agreement.
7. If, upon joint review of the aforementioned bids, STATE, by written notice to TAM, elects to not proceed with PROJECT, thereby causing STATE to reject all bids, STATE agrees to pay for all costs related to PROJECT incurred by STATE, including all legal costs and damages resulting from rejection of all bids for PROJECT.
8. If, upon joint review of the aforementioned bids, TAM, by written notice to STATE's District 4 Office, elects to not proceed with PROJECT, thereby causing STATE to reject all bids, TAM agrees to pay STATE for all costs related to PROJECT incurred by STATE, including all legal costs and damages resulting from rejection of all bids for PROJECT.
9. If, upon opening of bids for PROJECT, it is found that the lowest responsible bid exceeds the Engineer's Estimate by more than ten percent (10%), STATE and TAM shall consult upon a course of action. If, after fifteen (15) days, a course of action is not agreed upon, this Agreement shall be deemed to be terminated by mutual consent pursuant to Article 9 of this Section III.
10. If termination of this Agreement is by mutual consent, STATE and TAM will share all PROJECT-related costs incurred by STATE under this Agreement prior to termination based upon their proportionate share of PROJECT construction costs as set forth in this Agreement.

11. After award of the construction contract for PROJECT, should the cost of the project exceed the funding amounts shown in Exhibit A-2 of this Agreement, STATE and TAM shall work cooperatively to secure additional funding for the project.
12. The cost of any engineering or maintenance referred to herein in this Agreement shall include all direct and indirect costs (functional and administrative overhead assessment) attributable to such work, applied in accordance with STATE's standard accounting procedures.
13. STATE's share of the costs referred to herein include Federal-aid funds and MATCH FUNDS based on the assumption that Federal-aid funds will be allocated for financing a portion of STATE's share of the PROJECT construction costs as shown in Exhibit C. In the event that Federal-aid participation is not secured, this Agreement may be terminated by STATE at any time prior to award of the construction contract for PROJECT, or alternatively, each party's participation may be renegotiated to "make up" for the loss of Federal-aid funds.
14. Upon completion of all work under this Agreement, ownership and title to all materials, equipment, and appurtenances installed within the State Highway right of way will automatically be vested in STATE except for the multi-use bike path surface, fences, signs, landscaping and barriers, which will be owned by TAM. Materials, equipment, and appurtenances installed outside of the State Highway right of way will automatically be vested in the entity over whose property those improvements lie. No further agreement will be necessary to transfer ownership as hereinbefore stated.
15. STATE owns the property below the multi-use bike path and reserves the right to use the multi-use bike path for temporary highway maintenance purposes without restrictions and/or obligations of any kind.
16. Operation and maintenance responsibilities for IMPROVEMENTS are the subject of a separate Maintenance Agreement to be executed before the start of PROJECT construction.
17. Nothing in the provisions of this Agreement is intended to create duties or obligations to or rights in other parties not parties to this Agreement or affect the legal liability of any party to this Agreement by imposing any standard of care with respect to the maintenance of State Highways different from the standard of care imposed by law.
18. Neither STATE nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by TAM under or in connection with any work, authority or jurisdiction conferred upon TAM and arising under this Agreement. It is understood and agreed that TAM shall fully defend, indemnify and save harmless STATE and all its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation and other theories or assertions of liability occurring by reason of anything done or omitted to be done by TAM under this Agreement.

19. Neither TAM nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by STATE under or in connection with any work, authority or jurisdiction conferred upon STATE and arising under this Agreement. It is understood and agreed that STATE shall fully defend, indemnify and save harmless TAM and all its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation and other theories or assertions of liability occurring by reason of anything done or omitted to be done by STATE under this Agreement.
20. No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.
21. This Agreement shall terminate upon completion and acceptance of all construction contracts for PROJECT by STATE, or on December 31, 2011, whichever is earlier in time. However, the ownership, operation, maintenance, liability, audit, and claim clauses shall remain in effect until terminated or modified in writing, by mutual agreement. Should any construction-related claim arising out of PROJECT be asserted against STATE, TAM agrees to extend the termination date of this Agreement and provide additional funding as required to cover TAM's proportionate share of costs, or execute a subsequent agreement to cover those eventualities.
5. All other terms and conditions of said Agreement (Document No. 015737) shall remain in full force and effect.
6. This Amendment No. 2 to Agreement is hereby deemed to be part of Document No. 015737.

STATE OF CALIFORNIA
Department of Transportation

TRANSPORTATION AUTHORITY
OF MARIN

WILL KEMPTON
Director

By: _____
Deputy District Director

By: _____
Executive Director

Approved as to form and procedure:

Attorney
Department of Transportation

Certified as to budgeting of funds:

District Budget Manager

Certified as to financial terms and
conditions:

Accounting Administrator

RESOLUTION 2006-10

RESOLUTION OF THE TRANSPORTATION AUTHORITY OF MARIN (TAM) AUTHORIZING THE CHAIRMAN TO EXECUTE AMENDMENT NO. 2 (DISTRICT AGREEMENT NO. 4-1938-A2) TO FINANCIAL CONTRIBUTION AGREEMENT NO. 4-1938-C REGARDING THE ADDITION OF THE MULTI-USE PATH AND SOUND ABSORBING SOUNDWALLS TO THE U.S. HIGHWAY 101 GAP CLOSURE PROJECT AND ALLOCATING AN ADDITIONAL \$2,200,000 OF MEASURE A FUNDS FOR CONSTRUCTION OF THE MULTI-USE PATH AND SOUND ABSORBING SOUNDWALLS

WHEREAS, the State Department of Transportation intends to provide high occupancy vehicle lanes on U.S. Highway 101; and

WHEREAS, the improvement is needed to facilitate traffic flows and to improve safety; and

WHEREAS, On January 29, 2004 the State Department of Transportation and TAM entered into Financial Contribution Agreement No. 4-1938-C and on April 28, 2005 the State Department of Transportation and TAM entered into Amendment No. 1 to Financial Contribution Agreement No. 4-1938-C documenting TAM's financial participation in the project; and

WHEREAS, TAM's desire to include a multi-use path and sound absorbing soundwalls have necessitated the revision to the Financial Contribution Agreement; and

WHEREAS, TAM has agreed to commit STIP Transportation Enhancement, additional Construction Mitigation and Air Quality Improvement Program (CMAQ) Funds and additional Measure A funds to the construction of the project;

NOW, THEREFORE, BE IT RESOLVED that the Transportation Authority of Marin does hereby approve Amendment No. 2 (District Agreement No. 4-1938-A2) to Financial Contribution Agreement No. 4-1938-C for the construction of high occupancy vehicle lanes, a multi-use path and sound absorbing soundwalls on U.S. Highway 101 and desires to contribute \$2,432,000 In STIP Transportation Enhancement Funds, \$3,480,000 in Construction Mitigation and Air Quality Improvement Program (CMAQ) Funds and an additional \$2,200,000 of Measure A funds for the construction of the project, and the Chairman is hereby authorized to execute the herein described Financial Contribution Agreement on behalf of TAM.

PASSED AND ADOPTED at a regular meeting of the Transportation Authority of Marin on the 22nd day of June, 2006 by the following vote to-wit:

AYES: Commissioners:

NOES: Commissioners:

ABSENT: Commissioners:

STEVE KINSEY, CHAIR
TRANSPORTATION AUTHORITY OF MARIN

ATTEST:

Dianne Steinhauser
Executive Director